

Message Text

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ACTION L-03

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FM AMEMBASSY LIMA

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C O N F I D E N T I A L LIMA 8581

FOR P - MR. HABIB, L - MR. LEIGH, ARA - MR. GRUNWALD AND
MR. LUERS, TREASURY - MR. R. GOODMAN

FROM CARL MAW

E.O. 11652: NGDS

TAGS: BDIS, EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA - DRAFT AGREEMENT

REF: A. STATE 233194, B. LIMA 8512, C. LIMA 8557

1. APPRECIATE COMMENTS REF A. SUGGESTED CHANGES PARA A
REF A INCORPORATED DRAFT TEXT. OTHER PROBLEM, OF WHICH WE
WERE AWARE, IS MUCH MORE DIFFICULT TO DEAL WITH. WE HAVE
EXPLAINED BELOW WHY DESPITE DISADVANTAGES OF CONTINGENCY
OF PAYMENT OBLIGATION ON BANK LOAN WE BELIEVE U.S. INTERESTS
BEST SERVED BY CONCLUSION OF AGREEMENT ALONG LINES PRESENTLY
DRAFTER (SEE REF C; FURTHER MODIFICATIONS SAME PORTIONS
FOLLOW SEPTTEL).

2. ESSENTIAL FACT OF LIFE IS THAT THERE WILL BE NO CASH
PAYMENT--NO MARCONA SETTLEMENT--UNLESS AND UNTIL PERU RECEIVES
THE BALANCE OF PAYMENTS U.S. BANK LOAN FINANCING, AND GOP
IS NO REPEAT NOT PREPARED TO MAKE UNCONDITIONAL
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COMMITMENT OF PAYMENT WITHOUT MONEY AT HAND. GOP

TAKES NO PRIDE IN THE NEAR BANKRUPT SITUATION IN WHICH IT PRESENTLY FINDS ITSELF; RATHER, ITS OFFICIALS FIND IT HIGHLY EMBARRASSING. NOR HAVE THEY SUGGESTED ANY LINKAGE BETWEEN THE OBLIGATION TO COMPENSATE, WHICH IN THE AGREEMENT IS STATED CLEARLY AND UNEQUIVOCALLY, AND THE QUESTION OF PAYMENT.

3. THUS ALTERNATIVES TO PRESENT APPROACH, WHERE PAYMENT IS CONTINGENT ON LOAN PROCEEDS BECOMING AVAILABLE ARE A) TO DELAY CONCLUSION OR ENTRY INTO FORCE UNTIL GOP HAS RECEIVED THE PROCEEDS, OR B) TO CONVINCE MARCONA TO SELF-FINANCE CASH PORTION BY MAKING LOAN AGREEMENT WITH GOP ON SAME TERMS AS CONSORTIUM LOAN. (TERMS OF LETTER OF INTENT SIGNED ABOUT TEN DAYS AGO ARE CLOSELY HELD BUT KNOWN TO US.) NEITHER OPTION, UNFORTUNATELY IS VIABLE. THE BANKS WILL NOT GO AHEAD WITH THE LOAN UNTIL A FIRM MARCONA SETTLEMENT HAS BEEN REACHED, AND MARCONA HAS NO DESIRE TO SELF-FINANCE OR COUNTENANCE FURTHER COSTLY DELAYS IN IMPLEMENTATION OF THE SALES AGREEMENT THAT IS THE OTHER MAJOR ELEMENT OF THE SETTLEMENT.

4. THUS TO AVOID A VICIOUS CIRCLE WE DECIDED TO ACCEPT CONCEPT OF INTERGOVERNMENTAL AGREEMENT TIED TO AVAILABILITY OF LOAN, REALIZING THAT IF NO LOAN IS FORTHCOMING THERE WILL BE NO PAYMENT, UNDER ARTICLE II THERE WILL BE NO SETTLEMENT IN THE SENSE OF RECOGNITION OF FULFILLMENT OF PERU'S OBLIGATIONS, AND THAT THE PACKAGE WILL HAVE TO BE AT LEAST PARTIALLY RENEGOTIATED. (OTHER ALMOST CERTAIN CONSEQUENCES OF NO LOAN ARE DEFAULT BY PERU ON ITS PUBLIC AND PRIVATE INTERNATIONAL DEBT.) THUS THE AGREEMENT HAS NO REAL IMRACT, NO LASTING BENEFIT FOR PERU, AND NO LEGAL EFFECT ON PERU'S INTERNATIONAL OBLIGATION TO PAY JUST COMPENSATION, UNTIL PAYMENT IS MADE.

5. THE BANK FINANCING PACKAGE (CONSISTING OF ABOUT \$300 MILLION IN ALL, \$200 MILLION FROM U.S. AND THE REST FROM FOREIGN BANKS) IS DEPENDENT ON NUMBER OF TERMS AND CONDITIONS BESIDES MARCONA; IF A SETTLEMENT WOULD AUTOMATICALLY ASSURE THE LOAN, PERU WOULD PROBABLY HAVE ACCEPTED

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UNCONDITIONAL PAYMENT. WHILE MARCONA MATTER IS PROBABLY PRINCIPAL OUTSTANDING FACTOR FOR MAJORITY OF SYNDICATE BANK MEMBERS, THEY HAVE REQUIRED AND ARE REQUIRING PERU TO TAKE A VARIETY OF STEPS RELATED TO ITS INTERNAL AND EXTERNAL ECONOMIC POLICIES, AND TO SECURE ADDITIONAL FUNDS FROM NON-SYNDICATE U.S., AND EUROPEAN BANKS.. SUCH REQUIREMENTS AS A CONDITION OF FINANCING ARE BOTH UNPRECEDENTED AND WELCOME. GOP OFFICIALS BELIEVE, AND WE ARE

INCLINED TO CONCUR ON BASIS EXTENSIVE KNOWLEDGE DETAILS OF LETTER OF INTENT AND NEGOTIATIONS BETWEEN BANKS AND GOP, THAT CONCLUSION OF MARCONA AGREEMENT NOW WILL MAKE POSSIBLE SIGNATURE OF LOAN AGREEMENTS (U.S. AND FOREIGN PORTIONS) ABOUT OCTOBER 19-21.

6. U.S. TEAN ALSO AWARE THAT WE HAVE VIRTUALLY IN HAND--SUBJECT TO TUESDAY RATIFICATION BY COUNCIL OF MINISTERS--ONE OF MOST REASONABLE AND RESPONSIBLE EXPROPRIATION SETTLEMENTS IN HISTORY FOR WHICH PRESENT GOVERNMENT OF PERU DESERVES FULL CREDIT. TOTAL SETTLEMENT FIGURE OF NEARLY \$65 MILLION EXCEEDS BOOK VALUE AND IS WELL WITHIN SRI INDEPENDENT RESEARCH STUDY ESTIMATE OF GOING CONCERN VALUE. MORE THAN ANY OTHER WE ARE AWARE OF, IT FULLY MEETS U.S. STANDARD OF JUST COMPENSATION (AS IT IS CLEARLY ADEQUATE AND EFFECTIVE IF NOT FULLY PROMPT), AND THE AGREEMENT ITSELF GIVES A DEGREE OF EXPLICIT RECOGNITION TO THIS PRINCIPLE PREVIOUSLY UNHEARD OF IN THIS HEMISPHERE. IN ADDITION, WE BELIEVE THE SETTLEMENT WILL HELP PERUVIANS AND OTHERS OF SIMILAR ILK TO REALIZE FULLY DANGERS OF ECONOMIC AND FOREIGN INVESTMENT POLICIES THEY HAVE BEEN PURSUING UNTIL RECENTLY. AS DEPARTMENT IS WELL AWARE, THIS HAS BEEN A LONG AND COMPLEX NEGOTIATION. THE SETTLEMENT ITSELF, CONSISTING OF THE INTERGOVERNMENTAL AGREEMENT, ORE SALES CONTRACT AND A PROMISSORY NOTE (GOP TO MARCONA, WITH THE SAME CONTINGENCY) RUNS A GRAVE RISK OF FALLING APART IF NOT CONCLUDED IMMEDIATELY.

7. INsofar AS PRECEDENT IS CONCERNED, WE ARE AWARE THAT GREENE SETTLEMENT WAS ALSO CONTINGENT ON OBTAINING OF U.S. BANK FINANCING. EVEN THOUGH THAT CONTINGENCY WAS NOT EXPLICITLY WRITTEN INTO AGREEMENT, IT WAS THE FACT CONFIDENTIAL

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THAT JIM GREENE HIMSELF WAS ABLE TO ARRANGE AN \$80 MILLION LOAN FROM U.S. BANKS, A FACT THAT WAS WIDELY KNOWN AT THE TIME, THAT MADE SETTLEMENT POSSIBLE. THE GREENE AGREEMENT ITSELF DID NOT GO INTO FORCE UNTIL PAYMENT WAS MADE. HERE, IN CONTRAST, U.S. OFFICIALS HAVE HAD NO SIGNIFICANT INVOLVEMENT IN THE GOP'S BROAD FUND RAISING EFFORTS, WHERE PAYMENT TO MARCONA WILL BE ONLY ONE USE OF ABOUT 10 PERCENT OF THE TOTAL PROCEEDS.

8. WE SHOULD ALSO MENTION IN PASSING THAT PERU'S PAST PERFORMANCE RESPECTING DEBT OBLIGATIONS--AS CONTRASTED TO ITS RECORD ON EXPROPRIATION--IS EXCELLENT, AND WE HAVE LITTLE DOUBT THAT MBRCONA WILL GET ITS MONEY THE DAY THE PROCEEDS OF THE LOAN BECOME AVAILABLE.

9. UNDER TSE CIRCUMSTANCES WE BELIEVE IT WOULD BE VERY MUCH CONTRARY TO U.S. INTERESTS TO RISK A COMPLETE LOSS OF THIS VERY ADVANTAGEOUS SETTLEMENT THROUGH MAJOR CHANGES IN THE NATURE OF THE PACKAGE OR A FOUR TO SIX WEEK DELAY IN CONCLUDING THE SETTLEMENT. I WILL DO THE BEST I CAN TO SECURE GOP AGREEMENT TO DELETING THE REFERENCE TO THE BANK LOAN IN THE AGREEMENT, REFERRING INSTEAD ONLY TO THE PROMISSORY NOTE, BUT AM NOT CONFIDENT OF SUCCESS. IN ANY EVENT, I PLAN TO GO AHEAD WITH SIGNATURE SEPTEMBER 22 IF THE GOP APPROVES THE TENTATIVE SETTLEMENT PACKAGE.
DEAN

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